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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,398	01/14/2005	Mary Lafuze Comer	PU030248	2261

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EXAMINER	
CHEVALIER, ROBERT	
ART UNIT	PAPER NUMBER
2621	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/521,398	COMER ET AL.	
	Examiner	Art Unit	
	Bob Chevalier	2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *14 January 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claim 15-27 are rejected under 35 U.S.C. 101 because the claim is directed to a recording medium storing nonfunctional descriptive material.

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. See, e.g. Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory) and merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. See MPEP 2106.IV.B.1.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-12, and 15-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes, Jr et al in view Horne et al.

Hughes, Jr. et al discloses a digital video recording apparatus that shows substantially the same limitations recited in claims 1, 6-7, 15, and 19-20, including the feature providing a multiple version of a digital recording (See Hughes, Jr. et al's Figure 1), the feature of multiplexing a base layer with an enhancement layer, the base layer representing a first version of the digital recording, and the enhancement layer having enhancement data which can be combined with the base layer to represent a second version of the digital recording as specified in the present claims 1, 6-7, 15, and 19-20. (See Hughes Jr. et al's Figure 5).

Hughes, Jr. et al fails to specifically disclose the feature of the base layer data including cells associated with the base interleaving units an the enhancement layer data including cells associated with the enhancement interleave units as specified in the present claims 1, 6-7, 15, and 19-20.

Horne et al does disclose a video encoding apparatus which includes the claimed feature of the video data having the feature of base layer representing a version of the video data and the feature of the enhancement layer representing another version of the video data, wherein the base layer data including cells associated with the base

interleaving units and the enhancement layer data including cells associated with the enhancement interleave units as specified in the present claims 1, 6-7, 15, and 19-20. Applicant's attention is directed to Horne et al's Figure 1, and the corresponding disclosure.

It would have been obvious to one skilled in the art to modify the Hughes, Jr. et al's video recording apparatus wherein the provided video data having the base layer and the enhancement layer would incorporate the capability of the base layer data including cells associated with the base interleaving units and the enhancement layer data including cells associated with the enhancement interleave units in the same conventional manner as is shown by Horne et al. The motivation is to increase the quality of the recorded video data, thereby, providing a clearer video signal at reproduction time as suggested by Horne et al.

With regard to claim 2, the feature of interleaving the base layer with an enhancement layer as specified thereof is present in cited reference of Hughes Jr. et al. (See Hughes Jr. et al's claim 5).

With regard to claims 3-4, and 16-17, it is noted that the limitations recited thereof are present in Hughes Jr. et al, including the feature of storing the base interleave units and the enhancement interleave units in an alternating scheme as specified thereof. (See Hughes Jr. et al's Figure 1, components 114, 112).

With regard to claims 5, and 18, the feature of the playback time being correlated to the base interleave unit to be approximately equal to a playback time correlated to the enhancement interleave units as specified thereof would be inherently present in the

cited reference of Hughes Jr. et al. Because, one of ordinary skill in the art would readily recognize that playback two different versions of the same movie (Standard definition an high definition versions) would approximately take the same playback time since the two versions are basically the same movie.

With regard to claims 8-9, and 21-22, the feature of the coding being a base data in a format substantially similar to MPEG-2 as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's page 2, paragraph [0029], lines 7-8).

With regard to claims 10, and 23, the feature of the second version comprising high definition program content as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al (See Hughes Jr. et al's claim 16).

With regard to claims 11, and 24, the feature of storing the base layer and the enhancement layer on a single side storage medium as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's Figure 1, component 110).

With regard to claims 12, and 25, the feature of the storage medium being a DVD as specified thereof is present in Hughes Jr. et al. (See Hughes Jr. et al's Figure 1, component 110).

6. Claims 13-14, and 26-27, are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes Jr. et al, and Horne et al as applied to claims 1, and 15-16 above, and further in view of Official Notice.

The proposed combination of Hughes Jr. et al and Horne et al indicated above does disclose a DVD apparatus that shows substantially the same limitations recited in claims 13-14, and 26-27, including the feature of the base layer and the enhancement

layer as specified in the present claims 13-14, and 26-27. (See Hughes Jr. et al's Figure 1).

The proposed combination of Hughes Jr. et al and Horne et al indicated above fails to specifically disclose the feature of the decoder time stamp and the presentation time stamp as specified in the present claims 13-14, and 26-27.

Examiner takes Official Notice in that it is notoriously well known in the video encoding/decoding art to have a decoder time stamp and a presentation time stamp added to the encoded video data for the purpose of adjusting the decoding time and the display time during playback operation as specified in the present claims 13-14, and 26-27.

It would have been obvious to one skilled in the art to modify the proposed combination of Hughes Jr. et al and Horne et al's apparatus wherein the video data generated in the compressing means provided thereof (See Hughes Jr. et al's Figure 1, components 106, and 108) would include the feature of the decoder time stamp and a presentation time stamp added to the encoded video data for the purpose of adjusting the decoding time and the display time during playback operation in the same conventional manner as shown in the prior art. Examiner has taken Official Notice. The motivation is to adjust the decoding time and the display time during playback operation in the same conventional manner as suggested in the prior art.

Response to Arguments

7. Applicant's arguments filed 2/27/07 have been fully considered but they are not persuasive.

Regarding the Applicant's argument in that the claimed invention of the DVD medium comprises a physical, interconnected and functional arrangement of contents of a memory medium, Examiner disagrees. It is noted that, as indicated in the above rejection, the claimed invention is directed to a recording medium storing nonfunctional descriptive material. Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are neither physical "things" nor statutory processes. And merely claiming nonfunctional descriptive material stored in a computer-readable medium does not make it statutory. See MPEP 2106.IV.B.1. It is to be noted that there is no computer language recited in the claimed invention.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bob Chevalier whose telephone number is 571-272-7374. The examiner can normally be reached on MM-F (9:00-6:30), second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thai Tran can be reached on 571-272-7382. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ROBERT CHEVALIER
PRIMARY EXAMINER

B. Chevalier
April 12, 2007.